

# **Exhibit A**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

*In re Google Play Consumer Antitrust  
Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust  
Litigation*, Case No. 3:20-cv-05792-JD

*State of Utah, et al. v. Google LLC, et al.*, Case  
No. 3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**DEFENDANTS' EMERGENCY  
MOTION TO STAY THE COURT'S  
AUGUST 18, 2021 ORDER**

Hearing Date: August 25, 2021  
Time: 10:00 am  
Place: Courtroom 11, 19th Floor  
Judge: Hon. James Donato

**NOTICE OF MOTION AND MOTION TO  
STAY THE COURT'S AUGUST 18, 2021 ORDER**

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF**

**RECORD:** PLEASE TAKE NOTICE that on August 25, 2021 at 10:00 a.m. Pacific time, or sooner to the extent the Court can accommodate this emergency request, in Courtroom 11 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, before the Honorable James Donato, Defendants Google LLC, Google Payment Corp., Google Ireland Limited, Google Commerce Ltd., and Google Asia Pacific Pte. Ltd. (collectively, "Google"), will hereby move this Court for an Order temporarily staying the Court's August 18, 2021 Order (the "August 18, 2021 Order") to avoid irreparable injury to Google and to third parties, and to preserve the status quo, such that Google is afforded an opportunity to:

(a) file and permit the Court to consider a renewed sealing application in response to the August 18, 2021 Order; and

(b) if necessary, seek review of the August 18, 2021 Order in the Ninth Circuit.

In advance of filing this motion, Google obtained a stipulation from counsel for Developers, Consumers, and the States regarding a proposal for the shortening of time on this Motion, as provided in Local Rule 6-2.

This Motion is based upon Local Rules 6-2 and 7-3 and in accordance with the Court's inherent authority to manage its docket. It is supported by: the accompanying Stipulation and Proposed Order Shortening Time Per Local Rule 6-2(a) and Renewed Application to Seal, as well as the supporting declarations; all pleadings and filings in these matters; and such oral argument as the Court allows, if the Court deems oral argument necessary.

**STATEMENT OF ISSUES TO BE DECIDED**

Whether the Court will grant a temporary stay of the August 18, 2021 Order to preserve the status quo, such that Google is afforded an opportunity to: (a) file and permit the Court to consider a renewed sealing application in response to the August 18, 2021 Order; and (b) if necessary, seek review of the August 18, 2021 Order in the Ninth Circuit.

**MEMORANDUM OF POINTS AND AUTHORITIES**

On August 18, 2021, the Court issued an Order denying the parties' applications to seal portions of Plaintiffs' complaints that contain highly confidential and sensitive business information belonging to Defendants Google LLC, Google Payment Corp., Google Ireland Limited, Google Commerce Ltd., and Google Asia Pacific Pte. Ltd. (collectively, "Google"), as well as to other third parties. *See* Case No. 3:21-md-02981-JD, Dkt. 79 (the "August 18 Order"). The Court's August 18 Order directed Plaintiffs to file unredacted versions of their complaints within seven days—*i.e.*, any time before August 25, 2021. *Id.* at 3. Given the immediacy with which Plaintiffs were directed to file the unredacted complaints, in the absence of a temporary stay of the August 18 Order, Google would be unable to seek relief from this Court or, if necessary, from the Ninth Circuit, in connection with its request to seal highly sensitive confidential business information, including, for example, non-public financial data and specific commercial deal terms with third parties. The release of this information to competitors and counterparties would cause irreparable harm to Google and to third parties who rely on Google to maintain the confidentiality of their commercial deal terms.

To prevent irreparable harm to Google and third parties, and to maintain the status quo, Google promptly advised counsel for all Plaintiffs of its intention to seek emergency relief related to the August 18, 2021 Order. Google specifically requested that Plaintiffs, including Epic, each temporarily hold their unredacted complaints in abeyance to provide Google with time to seek emergency relief. Counsel for the States, Developers, and Consumers each promptly agreed to hold off on the filing of their unredacted complaints to provide Google with a fair opportunity to

1 file its emergency papers, and stipulated to a proposed shortening of time for any briefing on  
2 those papers. *See* Decl. of Brian C. Rocca ¶ 17.

3 But Epic chose a different path. With more than six days remaining on the time for  
4 submission of the unredacted complaint, despite clear notice of Google’s intent to imminently file  
5 emergency papers seeking to maintain the status quo, and despite counsel for all other Plaintiffs  
6 indicating agreement to provide time for Google to file its papers, Epic chose to file its  
7 unredacted complaint on the public docket. *See* Decl. of Brian C. Rocca ¶ 10. While Epic’s  
8 filing was intended to, and did, prejudice Google and third parties, there are three other  
9 complaints that contain **additional** highly sensitive information that should be sealed.

10 In the absence of a temporary stay of the August 18 Order, Google will be unable to seek  
11 further relief from this Court or, if necessary, from the Ninth Circuit. *See In re Copley Press Inc.*,  
12 518 F.3d 1022, 1025 (9th Cir. 2008). The collateral order doctrine has been applied in similar  
13 circumstances:

14 We agree with Apple and Samsung that these three [collateral order] conditions  
15 are satisfied. First, the Unsealing Orders conclusively determined that Apple’s  
16 and Samsung’s confidential information will be made public. Second, the  
17 Unsealing Orders present an important issue because they address the important  
18 balance between the public’s interest in understanding judicial proceedings and  
19 the parties’ right to access the courts without being unduly required to disclose  
20 confidential information. And all argue that the propriety of sealing court  
21 documents is an issue which is wholly separate from the merits of the action.  
22 Third, the Unsealing Orders would be effectively unreviewable on appeal from a  
23 final judgment because once the parties’ confidential information is made publicly  
24 available, it cannot be made secret again. *See, e.g., Ameziane v. Obama*, 620 F.3d  
25 1, 5 (D.C. Cir. 2010); *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir.  
26 2008).

27 *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1220 (Fed. Cir. 2013). Of  
28 note, in connection with this collateral order appeal, the Northern District of California granted a  
stay of the unsealing pending the filing and resolution of motions to stay before the Court of  
Appeals. *Id.* at 1219 (“On August 15, 2012, the district court granted a stay pending the filing  
and resolution of motions to stay in this court. The parties filed such motions, which this court  
granted on September 18, 2012. Accordingly, the August Order has been stayed pending  
appeal.”)

1 In light of the exigencies at issue, contemporaneous with this Motion, Google has filed a  
 2 Renewed Application to Seal for the Court's consideration. Although Google believes its prior  
 3 sealing position was properly tailored and adequately supported under controlling law, Google's  
 4 Renewed Application identifies a further subset of the sealable materials that are indisputably  
 5 protectable under longstanding sealing standards in the Ninth Circuit and the Northern District of  
 6 California. The disclosure of this information risks serious competitive and commercial harm to  
 7 Google and others, because the information includes non-public company financials, as well as  
 8 non-public terms of agreements and negotiation positions with third parties (including pricing and  
 9 other material terms). *See* Decl. of Christian Cramer.

#### 10 **CONCLUSION AND REQUEST FOR RELIEF**

11 For these reasons, Google respectfully requests the following

12 1. The Court should maintain the status quo by staying the August 18 Order until this  
 13 Court has acted on its Renewed Application To Seal. This Court has the discretion to issue such a  
 14 temporary stay under its inherent authority to control its docket, as part of the Court's "traditional  
 15 equipment for the administration of justice." *Nken v. Holder*, 556 U.S. 418, 421 (2009) (citation  
 16 omitted).

17 2. If the Court ultimately denies the Renewed Application To Seal, Google has a  
 18 right to appeal. *See Copeley Press*, 518 F.3d at 1025; *Center for Auto Safety v. Chrysler Group,*  
 19 *LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). Because execution of an order to file the unredacted  
 20 complaints risks mootness Google's right to appeal, Google respectfully requests that the Court set  
 21 the due date for filing the unredacted complaints to be seven days after the Ninth Circuit's  
 22 mandate has issued in connection with any appeal. Google intends to expedite any appeal to the  
 23 greatest extent possible.

24 3. Because of the risk of mootness, if the Court intends to deny this Emergency  
 25 Motion to Stay, or if it intends to require Plaintiffs to file unredacted complaints before an appeal  
 26 is resolved, Google respectfully requests that the Court at minimum stay any order requiring  
 27 Plaintiffs to file unredacted complaints for seven days to allow Google a window to seek an  
 28

expedited motion for a stay pending appeal from the Ninth Circuit and, if Google files such a motion, to maintain the stay until the Ninth Circuit has resolved Google's stay motion. *See In re Copley Press, Inc.*, 518 F.3d at 1025 ("Once information is published, it cannot be made secret again.")

Dated: August 20, 2021

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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

**IN RE GOOGLE PLAY STORE  
 ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

*In re Google Play Consumer Antitrust  
 Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust  
 Litigation*, Case No. 3:20-cv-05792-JD

*State of Utah, et al. v. Google LLC, et al.*, Case  
 No. 3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**DECLARATION OF BRIAN C.  
 ROCCA IN SUPPORT OF:**

**DEFENDANTS' EMERGENCY  
 MOTION TO STAY;**

**STIPULATION AND [PROPOSED]  
 ORDER SHORTENING TIME PER  
 LOCAL RULE 6-2(a); and**

**RENEWED APPLICATION TO SEAL**

Place: Courtroom 11, 19th Floor  
 Judge: Hon. James Donato



**DECLARATION OF BRIAN C. ROCCA**

I, Brian C. Rocca, declare as follows:

1. I am an attorney admitted to practice law in California and before this Court. I am a partner at Morgan, Lewis & Bockius LLP, counsel of record for Defendants Google LLC, Google Payment Corp., Google Ireland Limited, Google Commerce Ltd., and Google Asia Pacific Pte. Ltd. (collectively, “Google”) in the above-captioned matter. I submit this declaration in support of Google’s Emergency Motion to Stay; the parties’ Stipulation and Proposed Order Shortening Time Per Local Rule 6-2(a); and Renewed Application to Seal. Except as otherwise stated, all of the facts set forth herein are known to me personally, and, if called as a witness, I could and would testify competently to them.

2. On August 5, 2021, Google filed a request to seal certain portions of the four complaints in this MDL. *See* Case No. 21-md-02981-JD (“MDL”), Dkt. 74. In accordance with Local Rules, Google submitted a 31-page declaration that addressed on an item-by-item basis the specific information subject to seal, and the reasons for the sealing. *Id.* Google also submitted redacted versions of the exhibits to the supporting declaration. MDL Dkts. 74-3, 74-5, 74-7, 7-9. Google was selective in its request. It agreed to seek sealing for approximately half of the material that had been provisionally sealed by Plaintiffs. MDL Dkt. 74.

3. On August 10, 2021, Epic filed a response to Google’s submission. MDL Dkt. 75. Google responded and objected to the response on August 11, 2021. MDL Dkt No. 76. In that response, Google requested leave to file additional information if the Court required more detail in connection with the sealing request:

Mr. Rope’s declaration comports with Local Rule 79-5 and the practice in this District, but, if the Court believes that Google should support its request with either a supplemental declaration or additional detail in support of its sealing request, Google can provide such additional support and requests leave to do so.

4. On August 18, 2021 at 5:06 p.m., this Court issued an Order re Sealing of Complaints (the “August 18 Order”), denying in its entirety Google’s motion to seal portions of

1 the four separate complaints in the MDL, and directing Plaintiffs to file unredacted versions of  
2 their complaints within seven days, or no later than August 25, 2021. MDL Dkt. 79.

3 5. In light of the directive that Plaintiffs should file the unredacted complaints *within*  
4 *seven days*, I immediately attempted to make contact with counsel for Plaintiffs by telephone and  
5 email to request their agreement to hold off on filing unredacted versions of their complaint to  
6 provide Google with a fair opportunity to seek relief from the order.

7 6. Over the course of the next two hours, I was able to make contact with counsel for  
8 each of the Plaintiff-groups, and I specifically requested that Plaintiffs temporarily hold their  
9 unredacted complaints in abeyance. I made it clear that Google intended to seek emergency relief  
10 and needed an opportunity to prepare and file emergency motion papers. At the suggestion of  
11 counsel for the States, a call was scheduled on August 19 at 9:30 a.m. Pacific.

12 7. On August 19, I participated in a call with counsel for all Plaintiffs. I again stated  
13 Google's intention to file that same day an emergency request to stay the August 18 Order to  
14 provide Google with an opportunity to file a renewed request to seal in response to the August 18  
15 Order, and, alternatively, to seek review at the Ninth Circuit.

16 8. I asked each counsel for their agreement to temporarily hold their unredacted  
17 complaints in abeyance so Google had an opportunity to maintain the status quo and avoid  
18 irreparable harm. Counsel for the Consumer Plaintiffs, the Developer Plaintiffs, and the State  
19 Attorneys General each preliminarily indicated that the request was reasonable, suggested they  
20 were inclined to accommodate it, and agreed to promptly confer with their co-counsel and report  
21 back to me. Counsel for the States requested that I send a follow-up email after the conference so  
22 he could share it with his colleagues. Counsel for Epic acknowledged the request, advised they  
23 would speak to their client, but did not provide a definitive answer about whether Epic would  
24 refrain from filing its unredacted complaint while Google sought emergency relief.

25 9. Shortly after the call, I sent the following email:

26 Thank you for joining the call this morning. As discussed, Google is  
27 requesting your agreement to not file the unredacted complaints any earlier  
28 than you are required to file, in order to give Google [] an opportunity to file  
emergency papers with the Court seeking a temporary stay of the sealing  
order and to allow time for the Court to consider that request. The stay is

intended to avoid irreparable harm and to maintain the status quo to provide Google with an opportunity to present a renewed motion to seal in light of the Court's order, or, alternatively, an appeal to the Ninth Circuit. As I advised, we are preparing the emergency papers, and we request your agreement to Google's request to shorten time, so that the papers can be considered before the complaints are refiled in unredacted form on the docket. Thank you.

10. On August 19, 2021, almost simultaneous with my sending the above email, and without prior warning, Epic proceeded to file its unredacted First Amended Complaint. There were over six days remaining on the Court's deadline to file the complaint.

11. Soon after Epic filed its complaint, counsel for each of the Developers, Consumers and States replied to my email and confirmed that, despite Epic's decision to file, they would agree to hold off on the filing of their complaint to permit Google time to file the motion to stay.

12. On August 20, 2021, Google filed an Emergency Motion to Stay the Court's August 18, 2021 Order (the "Motion for Stay") and a Renewed Application to Seal.

13. As Google explains in the Motion for Stay, if the Court's August 18 Order is not stayed, the Consumer Plaintiffs, the Developer Plaintiffs, and the States will be required to file unredacted complaints by August 25, 2021, before Google is able to pursue available relief in connection with the August 18 Order. The public disclosure of highly sensitive and confidential business information would cause irreparable harm to Google's position in the marketplace by making available to Google's competitors and counterparties nonpublic material concerning Google's business dealings and strategies.

14. Under the default timeline provided in the Local Rules, it would take approximately 35 days for Google's Motion to Stay to be fully briefed and heard. *See* N.D. Cal. L.R. 7-2(a). In other words, the Plaintiffs' deadline for filing unredacted complaints would come and go before the Motion to Stay would be ripe for this Court's decision. The filing of unredacted complaints would effectually render the Renewed Application to Seal moot, depriving Google of its ability to seek relief from the August 18 Order.

15. In accordance with Local Rule 6-2(a)(2), this is the first request to shorten time filed in this MDL. Attached as Exhibit A is a listing of prior extensions of time in the MDL.

16. Because the Order is separate from and does not affect the merits of the case, the

requested time modification would have no effect on the case schedule.

17. Before filing the Motion to Stay, Google sought and obtained a stipulation to the requested time change. On August 19, counsel for the Developer Plaintiffs, the Consumer Plaintiffs, and the State Attorneys General agreed to Google's request to shorten time, as follows:

Aug. 20 by 1 p.m. PT: Google files motion to stay  
Aug. 23: Plaintiffs file responses, if any, to the motion to stay  
Aug. 24: Google files a reply, if any, in support of the motion to stay  
Aug. 25: Court hears argument on motion to stay, if necessary

18. The schedule is shortened to accommodate the briefing in advance of the expiration of the seven days from the Court's August 18 Order.

19. On August 20, 2021, Google is filing a Renewed Application to Seal, supported by the Declaration of Christian Cramer. Exhibits A, B, and C to the Cramer Declaration will be filed under seal; those exhibits highlight for the Court the materials that Google seeks to seal in its Renewed Application. To avoid waiver of its appellate rights with respect to the prior sealing request and subsequent order (MDL Dkts. 74, 79), Google is unable to submit at this time redacted versions of Exhibits A, B, and C (on the public docket), because doing so would reveal certain information that may be subject to appeal. Upon the Court's order on Google's Renewed Application to Seal, Google's counsel will promptly meet and confer with counsel for the Developer Plaintiffs, the Consumer Plaintiffs, and the State Attorneys General, regarding the filing of redacted versions of the Exhibits on the public dockets.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 20, 2021 in San Francisco, CA.

/s/ Brian C. Rocca  
 Brian C. Rocca

# EXHIBIT A

## PREVIOUS TIME MODIFICATIONS

Date	Dkt. No. (Case No.)	Description
September 10, 2020	37 (3:20-cv-05792-JD)	Stipulation regarding extension of time for defendants to respond to developer class complaint from September 11, 2020 to October 26, 2020.
September 14, 2020	32 (3:20-cv-05761-JD)	Stipulation regarding extension of time for defendants to respond to consumer class complaint from September 29, 2020 to October 26, 2021.
September 17, 2020	49 (3:20-cv-05671-JD)	Stipulation regarding extension of time for defendants to respond to Epic Games, Inc. complaint from September 25, 2020 to October 26, 2021.
August 17, 2021	78 (3:21-md-02981-JD)	Order establishing the parties' jointly proposed schedule for Google's motion to dismiss Plaintiffs amended complaints.

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 IN RE GOOGLE PLAY STORE  
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:

16 *In re Google Play Consumer Antitrust*  
17 *Litigation*, Case No. 3:20-cv-05761-JD

18 *In re Google Play Developer Antitrust*  
19 *Litigation*, Case No. 3:20-cv-05792-JD

20 *State of Utah, et al. v. Google LLC, et al.*, Case  
21 No. 3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' EMERGENCY  
MOTION TO STAY THE COURT'S  
AUGUST 18, 2021 ORDER**

Place: Courtroom 11, 19th Floor

Judge: Hon. James Donato

The Court, having read and considered Defendants Google LLC, Google Ireland Limited, Google Commerce Ltd., Google Asia Pacific Pte. Ltd., and Google Payment Corp.’s (collectively, “Google”) Emergency Motion to Stay the Court’s August 18, 2021 Order, the memoranda filed by the parties, the Declaration of Brian Rocca in support, and good cause appearing therefor, the Court hereby GRANTS Google’s Emergency Motion to Stay the Court’s August 18, 2021 Order.

**IT IS HEREBY ORDERED THAT:**

1. The August 18, 2021 Order is stayed until the Court has acted on Google’s Renewed Application to Seal. Plaintiffs are neither required nor permitted to file their unredacted Complaints while Google’s Renewed Application to Seal remains pending before this Court.
2. If the Court denies Google’s Renewed Application to Seal, Plaintiffs shall file unredacted versions of their complaints no earlier than seven days after the Ninth Circuit’s mandate has issued in connection with any appeal Google seeks, subject to and to the extent permitted by such mandate.

**OR, IN THE ALTERNATIVE:**

3. In the event the Court denies Google’s Emergency Motion to Stay or requires Plaintiffs to file unredacted complaints before any appeal is resolved, Plaintiffs shall file unredacted versions of their Complaints no earlier than seven days after such an order is entered. If Google files a motion to stay pending appeal in the Ninth Circuit during that seven-day period, Plaintiffs shall not file unredacted versions of their Complaints while Google’s stay motion remains pending before the Ninth Circuit.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable James Donato  
United States District Judge